

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DENNIS SHEPHARD]	
Plaintiff,]	
]	
v.]	No. 3:10-0284
]	Judge Campbell
MARK EARNEST, et al.]	
Defendants.]	

M E M O R A N D U M

The plaintiff, proceeding *pro se*, is an inmate at the Deberry Special Needs Facility in Nashville, Tennessee. He brings this action pursuant to 42 U.S.C. § 1983 against Mark Earnest, an inmate at the Northwest Correctional Complex, and Eric Johnson, an inmate at the Hardeman County Correctional Facility, seeking injunctive relief and damages.

The plaintiff claims that each defendant, on separate occasions within the past year, assaulted him without provocation.

To establish a claim for § 1983 relief, the plaintiff must plead and prove that a person or persons, while acting under color of state law, deprived him of some right guaranteed by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 1913, 68 L.Ed.2d 420 (1981).

The defendants, as prisoners, were not acting under color of state law at the time that they allegedly assaulted the plaintiff.

Thus, absent defendants who were acting under color of state law, the plaintiff has failed to state a claim upon which § 1983 relief can be granted. Under such circumstances, the Court is obliged to dismiss the complaint *sua sponte*. 28 U.S.C. § 1915(e)(2).

An appropriate order will be entered.

Todd Campbell
Todd Campbell
United States District Judge